HB 2354

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

ENROLLED

Com Sub. For

HOUSE BILL No. 2354

(By Delegates Jenkins, Kiss, Ashley, Thompson and Amores)

Passed March 8, 1996

In Effect From Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2354

(By Delegates Jenkins, Kiss, Ashley, Thompson and Amores)

[Passed March 8, 1996; in effect from passage.]

AN ACT to repeal sections seven and thirty-two, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article one-c of said chapter by adding thereto two new sections, designated sections five-a and fourteen; to amend and reenact section fourteen, article ten of said chapter; to further amend said article by adding thereto four new sections, designated sections seven-b, seven-c, fourteen-c and fourteen-d; to amend and reenact sections three, seventeen, seventeen-a, nineteen, twenty and twenty-seven, article eleven of said chapter; to further amend said article by adding thereto a new section, designated section forty-three, all relating generally to proumlgation of emergency legislative rules relating to the valuation of real or personal property within the state; confidentiality and disclosure of return information to develop or maintain a mineral mapping or geopgraphic information system; creating an offense for violation of confidentiality provisions and setting forth penalties; tax procedures and administration, abatement of interest attributable to errors and delays by tax division; abatement of any penalty or addition to tax attributable to written advice by tax commissioner; petition for reassessments; overpayments, credits and refunds; prompt payment of refunds of personal and corporate net income tax; imposition of estate tax; special lien for estate tax; discharge of nonresident decedent's real property

in absence of ancillary administration; final accounting delayed until liability for tax determined; liability of personal respresentatives; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That sections seven and thirty-two, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be repealed; that article one-c of said chapter be amended by adding thereto two new sections, designated sections five-a and fourteen; that section fourteen, article ten of said chapter be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections seven-b, seven-c, fourteen-c and fourteen-d; that sections three, seventeen, seventeen-a, nineteen, twenty and twenty-seven, article eleven of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section forty-three, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-5a. Rules.

After the first day of January, one thousand nine hundred ninety-six, all rules proposed or promulgated by the tax commissioner regarding the valuation of real or personal property within the state shall be subject to review by the legislative rule-making review committee as provided in section eleven, article three, chapter twnety-nine-a, and no such rules relating to the valuation of real or personal property within the state shall be promulgated as emergency legislative rules pursuant to section fifteen, article three, chapter twenty-nine-a.

§11-1C-14. Confidentiality and disclosure of return information to develop or maintain a mineral mapping or geographic information system; offenses; penalties.

(a) All information provided by or on behalf of a natural resources property owner or by or on behalf of an owner of an interest in natural resources property to any state or county representative for use in the valuation or assessment of natural resources property or for use in the development or maintenance of a legislatively funded

mineral mapping or geologic information system shall be confidential. Such information shall be exempt from disclosure under section four, article one of chapter twenty-nine-b of this code, and shall be kept, held and maintained confidential except to the extent such information is needed by the state tax commissioner to defend an appraisal challenged by the owner or lessee of the natural resources property subject to the appraisal: *Provided,* That this section may not be construed to prohibit the publication or release of information generated as a part of the minerals mapping or geologic information system, whether in the form of aggregated statistics, maps, articles, reports, professional talks or otherwise, presented in accordance with generally accepted practices and in a manner so as to preclude the identification or determination of information about particular property owners.

(b) Any state or county representative who violates this section by disclosing confidential information shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both such fine and imprisonment, together with the cost of prosecution. As used in this section, the term "state or county representative" includes any current or former state or county employee, officer, commission or board member, and any state or county agency, institution, organization, contractor or subcontractor, and any principal, officer, agent or employee thereof.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-7b. Abatement of interest attributable to errors and by tax division.

(a) *In general.* — In the case of any interest due on:

(1) Any deficiency attributable, in whole or in part, to any error or delay determined by the tax commissioner to have been caused by an officer or employee of the tax division (acting in his or her official capacity) in performing a ministerial act; or

(2) Any payment of any tax (or fee) assessed under section seven of this article to the extent that any error or

delay in such payment is determined by the tax commissioner to be attributable to an officer or employee of the tax division (acting in his or her official capacity) being erroneous or dilatory in performing a ministerial act, the tax commissioner may abate all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributable to the taxpayer (or feepayer) involved, and after the tax division has contacted the taxpayer (or feepayer) in writing with respect to such deficiency or payment.

(b) *Interest abated with respect to erroneous refund check.* — The tax commissioner may abate the interest that accrued under section seventeen of this article on any erroneous refund until the date demand for repayment is made, unless the taxpayer (or a related party) has in any way caused such erroneous refund.

§11-10-7c. Abatement of any penalty or addition to tax attributable to written advice by tax commissioner.

(a) *In general.* — The tax commissioner shall abate any portion of any penalty or addition to tax (or fee) attributable to erroneous advice furnished to the taxpayer (or feepayer) in writing by an officer or employee of the tax division, acting in such officer's or employee's official capacity.

(b) *Limitations.* — Subsection (a) of this section shall apply only if the tax commissioner finds that all of the following conditions are satisfied:

(1) The written advice was reasonably relied upon by the taxpayer (or feepayer) and was in response to a specific written request of the taxpayer (or feepayer); and

(2) The portion of the penalty or addition to tax (or fee) did not result from a failure by the taxpayer (or feepayer) to provide adequate or accurate information.

(c) Any person seeking relief under this section shall file with the commissioner all of the following:

(1) A copy of the person's written request to the commissioner and a copy of the commissioner's written advice;

20 (2) A statement signed under penalty of perjury set-
21 ting forth the facts on which the claim is based;

22 (3) Any other information which the commissioner
23 may require.

§11-10-14. Overpayments; credits; refunds and limitations.

1 (a) *Refunds of credits of overpayments.* — In the case
2 of overpayment of any tax (or fee), additions to tax, pen-
3 alties or interest imposed by this article, or any of the
4 other articles of this chapter, or of this code, to which this
5 article is applicable, the tax commissioner shall, subject to
6 the provisions of this article, refund to the taxpayer the
7 amount of the overpayment or, if the taxpayer so elects,
8 apply the same as a credit against the taxpayer's liability
9 for the tax for other periods. The refund or credit shall
10 include any interest due the taxpayer under the provisions
11 of section seventeen of this article.

12 (b) *Refunds or credits of gasoline and special fuel*
13 *excise tax or motor carrier road tax.* — Any person who
14 seeks a refund or credit of gasoline and special fuel excise
15 taxes under the provisions of section ten, eleven or twelve,
16 article fourteen of this chapter, or section nine or eleven,
17 article fourteen-a of this chapter, shall file his claim for
18 refund or credit in accordance with the provisions of such
19 sections. The ninety-day time period for determination of
20 claims for refund or credit provided in subsection (d) of
21 this section shall not apply to these claims for refund or
22 credit.

23 (c) *Claims for refund or credit.* — No refund or credit
24 shall be made unless the taxpayer has timely filed a claim
25 for refund or credit with the tax commissioner. A person
26 against whom an assessment or administrative decision has
27 become final shall not be entitled to file a claim for refund
28 or credit with the tax commissioner as prescribed herein.
29 The tax commissioner shall determine the taxpayer's claim
30 and notify the taxpayer in writing of his determination.

31 (d) *Petition of refund or credit; hearing.* — (1) If the
32 taxpayer is not satisfied with the tax commissioner's deter-
33 mination of taxpayer's claim for refund or credit, or if the
34 tax commissioner has not determined the taxpayer's claim

35 within ninety days after the claim was filed, or six months
36 in the case of claims for refund or credit of the taxes im-
37 posed by articles twenty-one, twenty-three and twenty-four
38 of this chapter, after the filing thereof, the taxpayer may
39 file, with the tax commissioner, either personally or by
40 certified mail, a petition for refund or credit: *Provided,*
41 That no petition for refund or credit may be filed more
42 than sixty days after the taxpayer is served with notice of
43 denial of taxpayer's claim.

44 (2) The petition for refund or credit shall be in writ-
45 ing, verified under oath by the said taxpayer, or by tax-
46 payer's duly authorized agent having knowledge of the
47 facts, and shall set forth with particularity the items of the
48 determination objected to, together with the reasons for
49 the objections.

50 (3) When a petition for refund or credit is properly
51 filed, the procedures for hearing and for decision applica-
52 ble when a petition for reassessment is timely filed shall be
53 followed.

54 (e) *Appeal.* — An appeal from the tax commissioner's
55 administrative decision upon the petition for refund or
56 credit may be taken by the taxpayer in the same manner
57 and under the same procedure as that provided for judicial
58 review of an administrative decision on a petition for reas-
59 sessment, but no bond shall be required of the taxpayer.

60 (f) *Decision of the court.* — Where the appeal is to
61 review an administrative decision on a petition for refund
62 or credit, the court may determine the legal rights of the
63 parties but in no event shall it enter a judgment for mon-
64 ey.

65 (g) *Refund made or credit established.* — The tax
66 commissioner shall promptly issue his requisition on the
67 treasury or establish a credit, as requested by the taxpayer,
68 for any amount finally administratively or judicially deter-
69 mined to be an overpayment of any tax (or fee) adminis-
70 tered under this article. The auditor shall issue his warrant
71 on the treasurer for any refund requisitioned under this
72 subsection payable to the taxpayer entitled to the refund,
73 and the treasurer shall pay the warrant out of the fund into

which the amount so refunded was originally paid: *Provided,* That refunds of personal income tax may also be paid out of the fund established pursuant to section ninety-three, article twenty-one of this chapter.

(h) *Forms for claim for refund or a credit; where return shall constitute claim.* — The tax commissioner may prescribe by rule or regulation the forms for claims for refund or credit. Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter, a return signed by the taxpayer which shows on its face that an overpayment of such tax has been made shall constitute a claim for refund or credit.

(i) *Remedy exclusive.* — The procedure provided by this section shall constitute the sole method of obtaining any refund, or credit, or any tax (or fee) administered under this article, it being the intent of the Legislature that the procedure set forth in this article shall be in lieu of any other remedy, including the uniform declaratory judgments act embodied in article thirteen, chapter fifty-five of this code, and the provisions of section two-a, article one of this chapter.

(j) *Applicability of this section.* — The provisions of this section shall apply to refunds or credits of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, to which this article is applicable.

(k) *Erroneous refund or credit.* — If the tax commissioner believes that an erroneous refund has been made or an erroneous credit has been established, he may proceed to investigate and make an assessment or institute civil action to recover the amount of such refund or credit, within two years from date the erroneous refund was paid or the erroneous credit was established, except that the assessment may be issued or civil action brought within five years from such date if it appears that any portion of the refund or credit was induced by fraud or misrepresentation of a material fact.

(l) *Limitation on claims for refund or credit.* —

(1) *General rule.* — Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, such taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return, or within two years from the date the tax, (or fee), was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not thereafter.

(2) *Extensions of time for filing claim by agreement.* — The tax commissioner and the taxpayer may enter into a written agreement to extend the period within which the taxpayer may file a claim for refund or credit, which period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before expiration of the period previously agreed upon.

(3) *Special rule where agreement to extend time for making an assessment.* — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if an agreement is made under the provisions of section fifteen of this article extending the time period in which an assessment of tax can be made, then the period for filing a claim for refund or credit for overpayment of the same tax made during the periods subject to assessment under the extension agreement shall also be extended for the period of the extension agreement plus ninety days.

(4) *Overpayment of federal tax.* — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, in the event of a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer's federal income tax liability, the period of limitation upon claiming a refund reflecting the final determination in taxes imposed by articles twenty-one and twenty-four of this chapter

shall not expire until six months after the determination is made by the United States Internal Revenue Service or other competent authority.

(5) *Tax paid to the wrong state.* — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, when an individual, or the fiduciary of an estate, has in good faith erroneously paid personal income tax, estate tax or sales tax, to this state on income or a transaction which was lawfully taxable by another state and, therefore, not taxable by this state, and no dispute exists as to the jurisdiction to which the tax should have been paid, then the time period for filing a claim for refund, or credit, for the tax erroneously paid to this state shall not expire until ninety days after the tax is lawfully paid to the other state.

(6) *Exception for gasoline and special fuel excise tax and motor carrier road tax.* — This subsection shall not apply to refunds of gasoline and special fuel excise tax or motor carrier road tax sought under the provisions of article fourteen or fourteen-a of this chapter.

(m) *Effective date.* — This section, as amended in the year one thousand nine hundred ninety-six, shall apply to claims for refund or credit filed on or after the first day of July, one thousand nine hundred ninety-six.

§11-10-14c. Prompt payment of refunds of personal income taxes.

(a) *General rule.* — The net amount of a lawful, mathematically correct, uncontested claim for refund of any tax imposed by article twenty-one of this chapter shall be refunded to the taxpayer within ninety days after such a claim for refund is filed with the tax commissioner. If the fund is not made to a taxpayer within the ninety days, the tax commissioner shall pay interest, at the rate specified in section seventeen-a of this article, for the period commencing with the date the claim for refund was received by the tax commissioner until the date the state warrant for the refund amount is issued, notwithstanding any provisions of section seventeen of this article to the contrary.

(b) *Definitions.* — For purposes of this section:

(1) A claim for refund is "filed with the tax commissioner" on the date it is physically received by the state tax division.

(2) A "lawful, mathematically correct, uncontested claim for refund" is one that is timely filed; is signed by the appropriate taxpayer or taxpayers; is mathematically correct; is supported by any necessary documentation; and appears on its face to be correct.

(c) The payment of a claim for refund under this section shall not bar the tax commissioner from later issuing an assessment to recover any amount erroneously refunded, plus statutory interest and any applicable additions to tax, within two years after the date the refund was made: *Provided,* That if the refund or any part thereof was obtained by fraud, the assessment may be made at any time.

(d) This section shall apply only to claims for refund of personal income taxes filed after the first day of January, one thousand nine hundred ninety-seven.

§11-10-14d. Prompt payment of refunds of corporation net income taxes.

(a) *General rule.* — The net amount of a lawful, mathematically correct, uncontested claim for refund of any tax imposed by article twenty-four of this chapter shall be refunded to the taxpayer within six months after a claim for refund is filed with the tax commissioner. If the refund is not made to a taxpayer within this period, the tax commissioner shall pay interest, at the rate specified in section seventeen-a of this article, for the period commencing with the date the claim for refund was received by the tax commissioner until the date the state warrant for the refund amount is issued, notwithstanding any provisions of section seventeen of this article to the contrary.

(b) *Definitions.* — For purposes of this section:

(1) A claim for refund is "filed with the tax commissioner" on the date it is physically received by the state tax division.

(2) A "lawful, mathematically correct, uncontested

claim for refund" is one that is timely filed; is signed by the appropriate taxpayer or taxpayers; is mathematically correct; is supported by any necessary documentation; and appears on its face to be correct.

(c) The payment of a claim for refund under this section shall not bar the tax commissioner from later issuing an assessment to recover any amount erroneously refunded, plus statutory interest and any applicable additions to tax, within two years after the date the refund was made: *Provided,* That if the refund or any part thereof was obtained by fraud, the assessment may be made at any time.

(d) This section shall apply only to claims for refund of corporation net income taxes filed after the first day of January, one thousand nine hundred ninety-seven.

ARTICLE 11. ESTATE TAXES.

§11-11-3. Imposition of tax.

Whenever a federal estate tax is payable to the United States, there is hereby imposed a West Virginia estate tax equal to the portion, if any, of the maximum allowable amount of federal credit for state death taxes which is attributable to property located in this state, or within its taxing jurisdiction. In no event, however, shall the estate tax hereby imposed result in a total death tax liability to this state and the United States in excess of the death tax liability to the United States which would result if this article were not in effect: *Provided,* That the estate tax hereby imposed shall not be affected by other credits properly allowable in computing the federal estate tax except that the unified credit established in Section 2010 of the Internal Revenue Code of 1986, as amended, shall be applied before calculating the West Virginia estate tax.

§11-11-17. Special lien for estate tax.

(a) *Lien created.* — Unless the tax imposed by section three of this article is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien for ten years after the death of the decedent upon all property, real or personal, of the decedent located in this

state, except as provided in subsection (d) of this section.

(b) *Liability of transferees and others.* — If the tax imposed by this article is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or possesses on the date of the decedent's death, property included in the gross estate for federal estate tax purposes, to the extent of the value at the time of the decedent's death of the property, shall be personally liable for the tax. Any part of the property transferred by (or transferred by a transferee of) the spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to a purchaser or holder of a security interest shall be divested of the lien provided in subsection (a) of this section and a like lien shall attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any person, except any part transferred to a purchaser or a holder of a security interest.

(c) *Continuance after discharge of fiduciary.* — The provisions of section twenty of this article eleven (relating to discharge of fiduciary from personal liability) shall not operate as a release of any part of the gross estate from the lien provided in subsection (a) of this section for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case the part (or the interest) so transferred shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from the purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

(d) *Exceptions.* —

(1) The part of the property of the decedent as may at the time be subject to the lien provided for in subsection

(a) of this section shall be divested of such lien to the extent used for payment of charges against the estate or expenses of its administration allowed by the county commission or court having jurisdiction thereof.

(2) The part of the personal property of the decedent as may at the time be subject to the lien provided for in subsection (a) of this section shall be divested of the lien upon the conveyance or transfer of the property to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth. The liens shall then attach to the consideration received for the property from the purchaser or holder of a security interest.

(e) *Release of lien.* — Subject to such regulations as the tax commissioner may prescribe, the tax commissioner shall issue a certificate of release of any lien arising under this section not later than thirty days after the day on which the tax commissioner finds that the liability for the amount assessed, together with all interest and applicable penalties and additions to tax in respect thereof, has been fully satisfied or has become legally unenforceable.

(f) *Certificate of discharge.* — Subject to such regulations as the tax commissioner may prescribe, the tax commissioner may issue a certificate of discharge of any or all of the property subject to the lien imposed by this section if the tax commissioner finds that the liability secured by the lien has been fully satisfied or provided for.

(g) *Effect of certificate.* —

(1) *Conclusiveness.* — Except as provided in subdivisions (2) and (3) of this subsection, if a certificate is issued pursuant to subsection (f) of this section by the tax commissioner and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed), the certificate shall have the following effect:

(A) In the case of a certificate of release, the certificate shall be conclusive that the lien referred to in the certificate is extinguished;

(B) In the case of a certificate of discharge, the certifi-

cate shall be conclusive that the property covered by the certificate is discharged from the lien; and

(C) In the case of a certificate of nonattachment, the certificate shall be conclusive that the lien of the state of West Virginia does not attach to the property of the person referred to in the certificate.

(2) *Revocation of certification of release or nonattachment.* — If the tax commissioner determines that a certificate of release or nonattachment of a lien imposed by this section was issued erroneously or improvidently, or if a certificate of release of the lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section five-q, article ten of this chapter, which has been breached, and if the period of limitation on collection after assessment has not expired, the tax commissioner may revoke the certificate and reinstate the lien:

(A) By mailing written notice, by certified mail, return receipt requested, of the revocation to the person against whom the tax was assessed at his or her last known address; and

(B) By filing notice of the revocation in the same office in which notice of lien to which it relates was filed (if the notice of lien had been filed).

Such reinstated lien: (i) Shall be effective on the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of the foregoing paragraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of the foregoing paragraph (B); and (ii) shall have the same force and effect (as of the date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section eleven, article ten of this chapter, (relating to lien for taxes).

(3) *Certificates void under certain conditions.* — Notwithstanding any other provision of this article, any lien imposed by this section shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for payment of the tax reacquires the

property after the certificate has been issued.

§11-11-17a. Discharge of nonresident decedent's real property in absence of ancillary administration.

(a) The domiciliary personal representative of a nonresident decedent may apply to the tax commissioner for a certificate releasing all real property situate in this state included in decedent's gross estate from any lien imposed by section seventeen of this article. In the absence of ancillary administration in this state, the tax commissioner may consider reliable and satisfactory evidence furnished by the personal representative regarding the value of real property and the amount of tax due under this article, or that no tax liability exists under this article with respect to any real property.

(b) If the tax commissioner determines that reliable and satisfactory evidence exists, an affidavit of value submitted by the personal representative made pursuant to and in conjunction with the evidence shall be marked as inspected by the commissioner and shall be filed by the estate in the county or counties of this state where the real property is situate.

(c) In determining tax liability, the tax commissioner may also consider an appraisal of the real property submitted in writing to the tax commissioner, paid for by the personal representative and made at the personal representative's request. The appraisal shall be performed by a licensed real estate appraiser acceptable to the tax commissioner and it shall be filed in the county or counties where the real property is situate.

(d) If the tax commissioner is satisfied that no tax liability exists, or that the tax liability of the estate has been fully discharged, the tax commissioner may issue a certificate under subsection (f), section seventeen of this article.

§11-11-19. Final accounting delayed until liability for tax determined.

(a) If a personal representative is required to file a federal estate tax return for the estate of a decedent, then

no final account of that personal representative shall be allowed or approved in any probate proceeding with respect to that estate, by the county commission, or the clerk thereof, before whom the proceeding is pending, unless the county commission finds that the tax imposed on the transfer of property by this article has been paid in full, or that no tax is due.

(b) No final account of a personal representative of an estate shall be allowed by any county commission, or clerk thereof, unless such account shows and the county commission, or clerk thereof, finds that all taxes imposed by this article upon the personal representative, which have become payable, have been paid.

(c) The certificate of release, discharge or nonattachment issued to the personal representative by the tax commissioner under section seventeen of this article shall be conclusive in the proceeding as to the liability or the payment of tax, to the extent provided in the certificate.

§11-11-20. Liability of personal representatives; etc.

(a) *Personal representative.* — Any personal representative who distributes any property of an estate without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this article, is personally liable for payment of the taxes due, to the extent of the value of any property that may come or that may have come into the possession of the personal representative. Security for payment of taxes due under this article shall be in an amount equal to or greater than the value of all property that is or has come into the possession of the personal representative, determined as of the time the security is furnished.

(b) *Other person having control, custody or possession of property.* — Any person in this state who has control, custody or possession of any property includible in the gross estate of a decedent for federal estate tax purposes, and who delivers any of the property to the personal representative or other legal representative of the decedent outside this state without first paying, securing another's payment of, or furnishing security for payment of the

21 taxes due under this article, is liable for the taxes due un-
22 der this article to the extent of the value of the property
23 delivered. Security for payment of the taxes due under
24 this article shall be in an amount equal to or greater than
25 the value of all property delivered to the personal repre-
26 sentative or other legal representative of the decedent
27 outside this state by such a person.

28 (c) *Persons not having control.* — For the purpose of
29 this section, persons do not have control, custody or pos-
30 session of a decedent's property if they are not responsible
31 for paying the tax due under this article, such as
32 transferees, which term includes, but is not limited to,
33 stockbrokers or stock transfer agents, banks and other
34 depositories of checking and savings accounts, safe depos-
35 it companies and life insurance companies.

36 (d) *Reliance upon tax commissioner's certificates.* —
37 For the purposes of this section, any person in this state
38 who has the control, custody or possession of any proper-
39 ty includible in the gross estate of the decedent for federal
40 estate tax purposes, and who delivers any of the property
41 to the personal representative or other legal representative
42 of the decedent, may rely upon the release or certificate
43 furnished by the tax commissioner under section seven-
44 teen of this article to the personal representative as evi-
45 dence of compliance with the requirements of this article,
46 and make the deliveries and transfers as the personal rep-
47 resentative may direct without being liable for any taxes
48 due under this article with respect to any property.

49 (e) *Discharge of personal liability for federal estate*
50 *taxes.* — If a personal representative receives a discharge
51 from personal liability for federal estate taxes pursuant to
52 Section 2204 of the Internal Revenue Code of 1986, as
53 amended, and if the personal representative makes written
54 application to the tax commissioner for determination of
55 the amount of the tax due under this article and for dis-
56 charge from personal liability, the tax commissioner, with-
57 in two months after receiving satisfactory evidence of the
58 Section 2204 discharge, but not after the expiration of the
59 period for issuance of a deficiency assessment, shall notify
60 the personal representative of the amount of the tax due

under this article, including the amount of any interest, additions to tax or penalties that are due. The personal representative, upon payment of the amount of which he is notified (other than any portion for which an extension of time for payment has been granted), and upon furnishing any bond that may be required by the tax commissioner to secure payment of any amount for which the time for payment has been extended, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing the discharge.

§11-11-27. Prima facie liability for tax.

(a) The estate of each decedent whose property is subject to the laws of this state and which is required to file a federal estate tax return shall be deemed prima facie liable for payment of estate taxes under this article and shall be subject to a lien therefor in the amount as may be later determined to be due and payable on the estate as provided in this article.

(b) This presumption of liability shall begin on the date of the death of the decedent and shall continue until the full settlement of all taxes which may be found to be due under this article, the settlement to be shown by receipts for payment of all taxes due under this article, to be issued by the tax commissioner as provided for in this article.

(c) Whenever the tax commissioner determines that an estate described in subsection (a) of this section is not liable for payment of tax under this article, the tax commissioner shall issue to the personal representative a certificate in writing to that effect, showing the nonliability to tax, which certificate of nonliability shall have the same force and effect as a receipt showing payment of tax. This certificate of nonliability may be recorded and shall be admissible in evidence in like manner as receipts showing payment of taxes due under this article.

§11-11-43. Effective date.

The amendments to this article made by this act shall take effect as provided in the Constitution of this state and,

upon the effective date, these amendments shall apply to the estates of all decedents dying after the thirtieth day of June, one thousand nine hundred eighty-five, for which no estate tax lien release has been issued by the tax commissioner prior to the effective date of these amendments in the year one thousand nine hundred ninety-six, and to estates of all decedents dying on or after the effective date of these amendments.

Enr. Com. Sub. for H. B. 2354] 20

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 1st day of April, 1996.

Governor

PRESENTED TO THE :

GOVERNOR

Date 3/26/96

Time 4:10 PM